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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-229

13 LESLIE ANN HOYLE,
14 a.k.a. LESLIE ANN BURNS
5005 Tequesquite Avenue, Apt. Q
15 Riverside, CA 92501

A C C U S A T I O N

16 Registered Nurse License No. 430043

17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about August 31, 1988, the Board issued Registered Nurse License
24 Number 430043 to Leslie Ann Hoyle, also known as Leslie Ann Burns ("Respondent").
25 Respondent's registered nurse license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on December 31, 2009, unless renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct. . .

. . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . .

6. Code section 490 states, in pertinent part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

7. Code section 493 states, in pertinent part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and

1 duties of the licensee in question, the record of conviction of the crime shall be
2 conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of
4 the crime in order to fix the degree of discipline or to determine if the conviction
5 is substantially related to the qualifications, functions, and duties of the licensee in
6 question.

7 As used in this section, "license" includes "certificate," "permit,"
8 "authority," and "registration."

9 8. Code section 2762 states, in pertinent part:

10 In addition to other acts constituting unprofessional conduct within the
11 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
12 for a person licensed under this chapter to do any of the following:

13 (a) Obtain or possess in violation of law, or prescribe, or except as
14 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
15 himself or herself, or furnish or administer to another, any controlled substance as
16 defined in Division 10 (commencing with Section 11000) of the Health and Safety
17 Code or any dangerous drug or dangerous device as defined in Section 4022.

18 (b) Use any controlled substance as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code, or any dangerous drug or
20 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
21 or in a manner dangerous or injurious to himself or herself, any other person, or
22 the public or to the extent that such use impairs his or her ability to conduct with
23 safety to the public the practice authorized by his or her license.

24 (c) Be convicted of a criminal offense involving the prescription,
25 consumption, or self-administration of any of the substances described in
26 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
27 record pertaining to, the substances described in subdivision (a) of this section, in
28 which event the record of the conviction is conclusive evidence thereof. . .

9. Code section 4060 states, in pertinent part:

10 No person shall possess any controlled substance, except that furnished to
11 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
13 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
14 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
15 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
16 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
17 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
18 section shall not apply to the possession of any controlled substance by a
19 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
20 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
21 practitioner, or physician assistant, when in stock in containers correctly labeled
22 with the name and address of the supplier or producer

23 10. Health and Safety ("H&S") Code section 11170 states that no person shall
24 prescribe, administer, or furnish a controlled substance for himself.
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1 11. H&S Code section 11173, subdivision (a), states, in pertinent
2 part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or
3 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
4 deceit, misrepresentation, or subterfuge . . ."

5 12. Code section 482 states, in pertinent part:

6 Each board under the provisions of this code shall develop criteria to evaluate the
7 rehabilitation of a person when:

8

9 (b) Considering suspension or revocation of a license under Section 490.
10 Each board shall take into account all competent evidence of rehabilitation
11 furnished by the applicant or licensee.

12 13. California Code of Regulations, title 16, section 1445 states, in pertinent
13 part:

14 (a) When considering the denial of a license under Section 480 of the code, the
15 board, in evaluating the rehabilitation of the applicant and his/her present
16 eligibility for a license will consider the following criteria:

17 (1) The nature and severity of the act(s) or crime(s) under consideration as
18 grounds for denial.

19 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
20 consideration as grounds for denial which also could be considered as grounds for
21 denial under Section 480 of the code.

22 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
23 to in subdivision (1) or (2).

24 (4) The extent to which the applicant has complied with any terms of parole,
25 probation, restitution, or any other sanctions lawfully imposed against the applicant.

26 (5) Evidence, if any, of rehabilitation submitted by the applicant.

27 (b) When considering the suspension or revocation of a license on the grounds
28 that a registered nurse has been convicted of a crime, the board, in evaluating the
rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with any terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) If applicable, evidence of expungement proceedings pursuant to Section
4 1203.4 of the Penal Code.

5 (6) Evidence, if any, of rehabilitation submitted by the licensee.

6 COST RECOVERY

7 14. Code section 125.3 provides, in pertinent part, that the Board may request
8 the administrative law judge to direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case.

11 CONTROLLED SUBSTANCE AT ISSUE

12 15. "Talwin," a brand of pentazocine hydrochloride, is a Schedule IV
13 controlled substance as designated by H&S Code section 11057, subdivision (g).

14 FIRST CAUSE FOR DISCIPLINE

15 (April 7, 1998 Criminal Conviction for Unlawfully Retaining 16 Aid Between October 1994 and December 1994)

17 16. Respondent is subject to disciplinary action pursuant to Code sections 490
18 and 2761, subdivision (f), in that she was convicted of a crime which is substantially related to
19 the qualifications, functions, and duties of a registered nurse, as follows:

20 a. On or about April 7, 1998, in the criminal proceeding titled *People v.*
21 *Leslie Ann Burns* (Consolidated Superior/Municipal Court Riverside County, 1998, No.
22 HEF001057), Respondent was convicted by the Court on her plea of guilty to one misdemeanor
23 count in violation of Welfare and Institutions ("W&I") Code section 10980, subdivision (c)
(unlawfully retaining aid).

24 b. The circumstances of the crime are that on and between October 1994 and
25 November 1994, Respondent did wilfully and unlawfully, by means of a false statement,
26 representation, impersonation, and other fraudulent device, obtain and render aid under the
27 provisions of Division 9 of the W&I Code for herself, W.R.B., and a child not in fact entitled
28 thereto in an amount exceeding \$400.

1 c. On or about April 7, 1998, the court ordered Respondent placed on
2 summary probation for three years under the following terms and conditions: (1) violate no law
3 or ordinance; (2) be committed to the custody of the Riverside Sheriff's Office for a minimum of
4 fourteen days; (3) commitment to be served on consecutive weekends from Fridays to Sundays;
5 (4) pay restitution fine of \$100.00; (5) pay restitution in an amount determined by and paid
6 through Financial Services; and (6) submit to immediate search of person, automobile, home,
7 premises, storage, personal/leased property with/without reasonable cause for detection of fraud
8 related documents by law enforcement.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(February 2, 1999 Criminal Conviction for Abuse/Endangerment**
11 **of a Child on August 29, 1998)**

12 16. Respondent is subject to disciplinary action pursuant to Code sections 490
13 and 2761, subdivision (f), in that she was convicted of a crime which is substantially related to
14 the qualifications, functions, and duties of a registered nurse, as follows:

15 a On or about February 2, 1999, in the criminal proceeding titled *People v.*
16 *Leslie Ann Burns* (Super. Ct. Riverside County, 1999, No. PEM014807), Respondent was
17 convicted by the Court on her plea of guilty to one misdemeanor count in violation of Penal Code
18 section 273a, subdivision (b) (abuse/endangerment of a child). The incident upon which the
19 conviction is based occurred on August 29, 1998.

20 b. On or about February 2, 1999, the court ordered Respondent placed on
21 summary probation for a period of three (3) years on the following terms and conditions: (1)
22 violate no law or ordinance; (2) pay a booking fee in the amount of \$110.00; (3) pay attorney's
23 fees in the sum of \$100.00; (4) pay restitution fine in the amount of \$100.00; (5) not possess nor
24 use any controlled substances unless medically prescribed; any prescribed usage to be
25 immediately reported to the Probation Officer; (6) submit to chemical test of blood, breath, urine
26 or combination and reasonable tests requested by law enforcement for the detection of alcohol;
27 (7) submit to immediate search of person, automobile; home, premises, storage, personal/leased
28 property with/without reasonable cause for the detection of controlled substances by law

1 enforcement; (8) comply with all directives of child protective services; (9) enroll and comply
2 with Diversion Program on Count 1; (10) pay diversion restitution fee of \$100.00; (11) pay an
3 administrative fee imposed pursuant to Penal Code sections 1001.15 and 1001.16 in amount of
4 \$100.00; and (12) be referred to Sun Ray Addiction Counseling and Education.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(July 3, 2003 Criminal Conviction for Fleeing from a Pursuing**
7 **Police Officer and Driving Under the Influence on April 26, 2003)**

8 16. Respondent is subject to disciplinary action pursuant to Code sections 490
9 and 2761, subdivision (f), in that she was convicted of crimes which are substantially related to
10 the qualifications, functions, and duties of a registered nurse, as follows:

11 a On or about July 3, 2003, in the criminal proceeding titled *People v. Leslie*
12 *Ann Burns* (Super. Ct. Riverside County, 2003, No. SWF004456), Respondent was convicted by
13 the Court on her plea of guilty to one felony count in violation of Vehicle Code ("V.C.") section
14 2800.2 (driving in a willful or wanton disregard to safety of persons or property while fleeing
15 from a pursuing police officer) and one misdemeanor count in violation of V.C. section 23152,
16 subdivision (b) (driving while having a blood alcohol level of 0.08% or higher).

17 b. The incident upon which the convictions were based occurred on or about
18 April 26, 2003, at 9:00 a.m. when Respondent was pulled over by a San Jacinto police officer at
19 the intersection of State Street and Cottonwood in Hemet, California, for driving in excess of 100
20 mph in a 55 mph zone.

21 c. On or about July 3, 2003, the court ordered Respondent placed on a five
22 (5) year probation on the following terms and conditions: (1) obey all laws and ordinances; (2)
23 be committed to custody of the Riverside Sheriff's Office for one day for booking purposes only,
24 to be released immediately upon completion of booking procedure; (3) pay a fine and assessment
25 in the amount of \$1,430.00; (4) pay \$110.00 for a booking fee; (5) pay restitution fine of
26 \$200.00; (6) pay administrative costs fee in the amount of \$35.00; (7) abstain from the use of
27 alcoholic beverages and not frequent places where it is the main item of sale; (8) not drive with
28 any measurable amount of alcohol in blood; (9) not drive unless properly licensed nor without

1 insurance or valid registration; (10) driver's license restricted for a period of three months except
2 travel to/from work, within the scope of employment, to/from alcohol treatment program only;
3 (11) attend and satisfactorily complete a first offender DUI program; (12) not possess nor use any
4 controlled substances unless medically prescribed; (13) submit to chemical tests of blood, breath,
5 urine combination and reasonable physical tests requested by law enforcement for detection of
6 controlled substances; (14) submit to immediate search of person, automobile, home, premises,
7 garage, storage areas and personal/leased property with/without probable cause by parole officer
8 or law enforcement officer; (15) not own, possess or have control or any firearm or deadly
9 weapon or related paraphernalia; (16) not have negative contact with victims; (17) not own,
10 possess, or have under control any firearm or deadly weapon or related paraphernalia for life;
11 (18) participate and complete counseling rehabilitation or treatment program deemed appropriate
12 by parole officer and authorize release of information relative to progress; (19) not associate with
13 any unrelated person on probation or parole; (20) reside at a residence approved by the Probation
14 Officer and not move without prior consent of the Probation Officer; (21) seek/maintain gainful
15 employment and/or attend a full-time school or vocational program; (22) report any law
16 enforcement contacts to the Probation Officer within 48 hours; and (23) pay costs of Probation
17 Supervision set at \$252.00.

18 FOURTH CAUSE FOR DISCIPLINE

19 **(January 18, 2005 Criminal Felony Convictions for Possession of Controlled** 20 **Substance, Receiving Stolen Property, and Embezzlement on June 27, 2004)**

21 16. Respondent is subject to disciplinary action pursuant to Code sections 490
22 and 2761, subdivision (f), in that she was convicted of crimes which are substantially related to
23 the qualifications, functions, and duties of a registered nurse while on criminal probation, as
24 follows:

25 a. On or about January 18, 2005, in the criminal proceeding titled *People*
26 *Leslie Ann Burns* (Super. Ct. Riverside County, 2005, No. RIF117981), Respondent was
27 convicted by the Court on her plea of guilty to one felony count in violation of H&S Code
28 section 11350, subdivision (a) (possession of designated controlled substances), one felony count

1 in violation of P.C. section 496, subdivision (a) (receiving stolen property), and one felony count
2 in violation of P.C. section 503 (embezzlement).

3 b. The circumstances of the crime are that on or about June 27, 2004, while
4 employed as a registered nurse by Orangetree Convalescent Hospital ("O.C.H."), Respondent did
5 wilfully and unlawfully have in her possession the controlled substance Talwin; receive
6 pharmaceutical drugs and supplies which she had obtained by theft from O.C.H. and, knowing
7 that said property had been so obtained, did conceal and withhold and aid in concealing and
8 withholding said property from O.C.H.; and appropriate to her own use said pharmaceutical
9 drugs of a value exceeding \$400.

10 c. On or about June 28, 2006, the court ordered Respondent placed on formal
11 probation for a period of twelve (12) months on the following terms and conditions: (1) obey all
12 laws, ordinances, and court orders; (2) be committed to the custody of the Riverside County
13 Sheriff for 24 days; (3) pay \$110.00 booking fee; (4) pay restitution of \$200.00; (5) pay costs of
14 probation supervision not to exceed \$252.00; (6) submit to chemical tests of blood, breath, urine,
15 combination and reasonable physical tests requested by law enforcement for detection of
16 controlled substances and/or alcohol; (7) submit to immediate search of person, automobile,
17 home, premises, garage, storage areas and personal/leased property with or without cause by
18 Parole Officer or law enforcement officer; (8) pay actual costs of court-ordered testing through
19 the court; (9) reside at a residence approved by the Probation Officer and not move without
20 his/her prior approval; (10) seek and maintain gainful employment or attend a full-time school or
21 vocational program; (11) not own, possess, have under your control or immediate access related
22 paraphernalia or incendiary device; and (12) not own possess, or have under your control any
23 firearm or deadly weapon or related paraphernalia for life.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Diversion, Possession, and Self-Administration of a Controlled Substance)**

3 13. Respondent is subject to disciplinary action pursuant to Code section
4 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
5 2762, subdivision (a), in that on or about June 27, 2004, while on duty as a registered nurse at
6 O.C.H. in Riverside, California, Respondent did the following:

7 **Diversion of Controlled Substances:**

8 a. Respondent obtained the controlled substance Talwin by fraud, deceit,
9 misrepresentation, or subterfuge, in violation of H&S Code section 11173, subdivision (a), as
10 follows: On the date indicated above, Respondent removed unknown quantities of Talwin from
11 the emergency kits ("E-kits")^{1/} located in the medication room at O.C.H. and then kept the
12 medication for her own personal use, as further set forth in paragraph 12(d) above.

13 **Possession of a Controlled Substance:**

14 b. On the date indicated above, Respondent possessed unknown quantities of
15 the controlled substance Talwin without a valid prescription from a physician, dentist, podiatrist,
16 optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060, as further set
17 forth in paragraphs 12(d) above.

18 **Self-Administration of a Controlled Substance:**

19 c. On the date indicated above, Respondent, self-administered the controlled
20 substance Talwin without lawful authority therefor.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Use of Controlled Substances to an Extent or in a Manner**

23 **Dangerous or Injurious to Oneself or Others)**

24 14. Respondent is subject to disciplinary action pursuant to Code section
25 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section

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27 1. E-Kits are small utility-style boxes that contain miscellaneous medications, are placed in each nurses
28 station, and are secured by a zip-tie with a serial number on it. E-kits are used in emergencies when normal
supplies of medications have been depleted and the attending physician has requested that a patient receive a
specific medication.

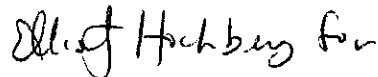
1 2762, subdivision (b), in that on June 27, 2004, while on duty as a registered nurse at O.C.H.,
2 Respondent used the controlled substance Talwin to an extent or in a manner dangerous or
3 injurious to herself and/or others or to the extent that such use impaired her ability to conduct
4 with safety to the public the practice authorized by her license. Respondent, by her own
5 admission, injected herself with the Talwin she had diverted from O.C.H. because she was going
6 through withdrawals as a result of a Vicodin addiction.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 430043, issued
11 to Leslie Ann Hoyle, also known as Leslie Ann Burns;
12 2. Ordering Leslie Ann Hoyle, also known as Leslie Ann Burns, to pay the
13 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
14 case, pursuant to Business and Professions Code section 125.3; and
15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 1/24/08

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18 RUTH ANN TERRY, M.P.H., R.N.
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
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